

IX. *Fixing America's Surface Transportation Act*

A. Introduction

On December 4, 2015, President Barack Obama signed the Fixing America's Surface Transportation Act (FAST Act) into law.¹ While the FAST Act deals primarily with providing funding for transportation infrastructure, it also contains several provisions that significantly alter the federal securities laws.² The changes to securities laws make it quicker and easier for "Emerging Growth Companies" (EGCs) to raise capital when entering the securities markets.³ These changes build upon the Jumpstart Our Business Startups Act (JOBS Act), which created the EGC category and relaxed the requirements surrounding initial public offerings (IPOs) of smaller companies.⁴

¹ Press Release, White House Office of the Press Sec'y, Statement by the Press Secretary on H.R. 22 (Dec. 4, 2015), *available at* <https://www.whitehouse.gov/the-press-office/2015/12/04/statement-press-secretary-hr-22> [<http://perma.cc/W5YM-3VWD>].

² Mark S. Nelson, *President Signs FAST Act With Its Securities Law Changes*, SEC. REG. DAILY (Dec. 7, 2015), http://www.dailyreporting-suite.com/securities/news/president_signs_fast_act_with_its_securities_law_changes [<https://perma.cc/RQJ4-SLDL>] ("The FAST Act provides a longer term solution to highway funding, reauthorizes the Export-Import Bank, and makes significant changes to federal securities laws that would ease requirements for emerging growth companies, fix gaps in existing securities laws, and push the SEC to review outmoded rules.").

³ Mark Stricherz, *Two Key IPO Clauses Take Effect From Highway Bill*, CQ ROLL CALL, 2016 WL 73623, Jan. 7, 2015 ("The wait is now shorter for so-called emerging growth companies between the time they file a confidential registration statement with the Securities and Exchange Commission and when they can begin drumming up financial support. . . . Emerging growth companies will have more financial leeway after they have filed for an initial public offering with the SEC. They had been limited, under the Jumpstart Our Business Startups Act of 2012 (PL 112-106), to revenue of less than \$1 billion in their latest fiscal years to qualify. Now their revenue can exceed \$1 billion, as long as they have already filed to make their public debut.").

⁴ Bonnie J. Roe, *IPO On-Ramp: The Emerging Growth Company*, BUS. L. TODAY (May 25, 2012), <http://apps.americanbar.org/buslaw/blt/content/2012/05/article-04-roe.shtml> [<https://perma.cc/BS4B-26XU>] ("The JOBS Act creates a new category of issuer--the "emerging growth company"--that will benefit from a lighter level of regulation in the offering process and as a

The FAST Act extends the JOBS Act's strategy of relaxing IPO regulatory requirements in the hopes that such deregulation will lead to more IPOs, which would in turn facilitate greater economic development and job growth.⁵ The FAST Act also makes changes to securities laws that have an impact beyond EGCs, including revisions to Regulation S-K, Form S-1, and Form 10-K.⁶ The general theme of the FAST Act is making compliance with securities regulations easier for EGCs.⁷

The FAST Act continues the trend of easing regulations in order to lower compliance costs, thereby sacrificing some disclosure in favor of promoting greater access to securities markets.⁸ These

reporting company for a period of up to five years from the date of the issuer's first public offering.”).

⁵ Stricherz, *supra* note 3 (“Small companies are the backbone of our economy, but they have been hit the hardest by excessive regulations,” Rep. Stephen Fincher, R-Tenn., said in a statement after the House passed its version of the highway bill (HR 22) on Dec. 3. He added that ‘on average, the majority of a company's job growth occurs after an IPO. By making improvements to the IPO on-ramp, my bill will make it easier for small emerging growth companies to expand, leading to more quality jobs for hardworking Americans.”).

⁶ Press Release, Sec. & Exch. Comm’n, Recently Enacted Transportation Law Includes a Number of Changes to the Federal Securities Laws (Dec. 10, 2015), *available at* <https://www.sec.gov/corpfin/announcement/cf-announcement---fast-act.html> [<http://perma.cc/GEJ7-GFGF>] [hereinafter SEC FAST Act Press Release] (“The statute requires the Commission to revise Regulation S-K to further scale or eliminate requirements relating to EGCs, accelerated filers, smaller reporting companies and other smaller issuers, and eliminate duplicative, overlapping, outdated or unnecessary provisions of Regulation S-K. . . . The statute requires the Commission to amend Form S-1 to allow smaller reporting companies to incorporate by reference in a registration statement on that form any documents that the company files after the effective date of the registration statement. . . . Section 72001 requires the Commission to issue rules that permit issuers to include a summary page in their annual reports filed on Form 10-K.”).

⁷ *Cf.* Nelson, *supra* note 2.

⁸ Andrew J. Brady et al., *JOBS Act 2.0 – New FAST Act Legislation Signed into Law to Facilitate Capital Formation*, AKIN GUMP STRAUSS HAUER & FELD LLP (Dec. 9, 2015), <https://www.akingump.com/en/experience/practices/corporate/ag-deal-diary/jobs-act-2-0-new-fast-act-legislation-signed-into-law-to-1.html> [<https://perma.cc/4GNE-L3AJ>] (“While the legislation is aimed at providing long-term funding certainty for surface transportation, it includes several provisions intended to improve upon the

updates will prove beneficial for small companies planning to go public; however, as seen in the JOBS Act, such a strategy gives investors less information to utilize in determining whether these companies are worthy investments and, in turn, reduced fraud protection.⁹ The FAST Act raises the issue of determining the proper balance between strict regulation and economic efficiency.¹⁰

This article will detail the FAST Act's updates to the federal securities laws, and their resulting policy debates. Part B provides some background on the JOBS Act and the EGC category. Part C highlights the major securities laws changes brought about by the FAST Act. Part D examines the policy discussions surrounding these changes. Finally, Part E provides some concluding remarks.

B. Background on Emerging Growth Companies

The category of "Emerging Growth Company" was created by the JOBS Act in 2012.¹¹ The Act defines an EGC as "an issuer that had total annual gross revenues of less than \$1,000,000,000 . . . during its most recently completed fiscal year."¹² The stated purpose of the JOBS Act was "[t]o increase American job creation and economic growth by improving access to the public capital markets for emerging growth companies."¹³ The JOBS Act provides several benefits and exemptions to EGCs to ease the securities registration process.

First, EGCs have fewer disclosure obligations relating to executive compensation because the JOBS Act exempts EGCs from the requirement that they have a separate resolution for shareholders

JOBS Act by facilitating capital formation transactions and easing regulatory burdens for smaller companies.").

⁹ Marlin R. H. Jensen, Beverly B. Marshall & John S. Jahera Jr., *JOBS Act: Has It Brought Back the IPO?*, 26 J. CORP. ACCT. & FIN. 9, 11 (2015) ("In addition, EGCs are not required to comply with new or revised financial accounting standards or to rotate audit partners every five years, financial statements are only needed for two years prior to issuing securities rather than three, executive compensation disclosure requirements are reduced, and EGCs do not need to hold nonbinding advisory shareholder votes on executive compensation.").

¹⁰ *Id.* at 9.

¹¹ Roe, *supra* note 4.

¹² *E.g.*, Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified as amended at 15 U.S.C. § 78c(80) (2012)) [hereinafter JOBS Act].

¹³ *Id.*

to vote on executive compensation and approve “golden parachute” compensation.¹⁴ Section 14(i) of the Securities Exchange Act of 1934 was also amended so that EGCs do not have to provide in their proxy materials “information that shows the relationship between executive compensation actually paid and the financial performance of the issuer.”¹⁵

The JOBS Act also reduced disclosure requirements for EGCs regarding the information required in registration statements.¹⁶ An EGC “need not present more than two years of audited financial statements” in the registration statement for its IPO, and in future registration statements an EGC may withhold “audited financial statements for any period prior to the earliest audited period presented in connection with its initial public offering.”¹⁷

In addition to less stringent disclosure requirements, the JOBS Act also allows EGCs to engage in a greater level of communication with analysts than is allowed other companies.¹⁸ In the case of EGCs, distributions of company research reports in advance of a public offering will not be found to constitute an offer or sale in violation of Section 5(c) of the Securities Act of 1933 (the ‘33 Act).¹⁹ The JOBS Act also adds a new subsection (d) to Section 5 of the ‘33 Act permitting an EGC to communicate with accredited investors and qualified institutional buyers to determine whether they may be

¹⁴ *Id.* (“Section 14A(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(e)) is amended . . . [a]n emerging growth company shall be exempt from the requirements of subsections (a) and (b).”); 15 U.S.C. § 78n-1 (2012).

¹⁵ JOBS Act § 3(a)(2) (“Section 14(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(i)) is amended by inserting, ‘for any issuer other than an emerging growth company,’ after ‘including.’”); 15 U.S.C. § 78n (2012).

¹⁶ BRENT A. OLSON, PUBLICALLY TRADED CORPORATIONS HANDBOOK § 8:48 (2d ed. 2015).

¹⁷ *Id.*

¹⁸ *Id.* (“The JOBS Act amends Section 2(a)(3) of the Securities Act of 1933 by adding that ‘[t]he publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer.’”).

¹⁹ *Id.*

interested in purchasing securities, even if the registration statement for such securities has yet to be filed or has just been filed.²⁰

C. FAST Act's Updates to Federal Securities Law

The FAST Act builds upon the JOBS Act by providing further benefits to EGCs and relaxing the registration requirements for other companies as well. For example, Section 71001 amends Section 6(e) of the Securities Act to permit EGC to commence a road show only 15 days after the public filing of its IPO registration statement, as compared to the old requirement of 21 days.²¹ The change gives EGCs more time to raise capital, but provides less time for investors to familiarize themselves with the company's registration statement; nevertheless, the change was welcomed by many market participants who believe that 15 days is enough time to review the registration statement.²²

Section 71002 further amends Section 6(e) of the Securities Act so that a company that would otherwise lose its qualification as an EGC may retain its EGC status for an additional year after the date on which it no longer meets the definition of an EGC or until it completes

²⁰ JOBS Act § 6(c).

²¹ Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 71001, 129 Stat. 1312 (2015) [hereinafter FAST Act] ("Section 6(e)(1) of the Securities Act of 1933 (15 U.S.C. 77f(e)(1)) is amended by striking "21 days" and inserting "15 days."); 15 U.S.C. § 77f(e)(1) (2012) ("Any emerging growth company, prior to its initial public offering date, may confidentially submit to the Commission a draft registration statement, for confidential nonpublic review by the staff of the Commission prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed with the Commission not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in section 230.433(h)(4) of title 17, Code of Federal Regulations, or any successor thereto."); Stricherz, *supra* note 3 ("The wait is now shorter for so-called emerging growth companies between the time they file a confidential registration statement with the Securities and Exchange Commission and when they can begin drumming up financial support. That delay is now 15 days before presenting their case for investment from potential investors, analysts, and fund managers. This "road-show" provision amends the Securities Act of 1933 (PL 73-22).").

²² David M. Lynn & Anna T. Pinedo, *A Summary of the Securities Law Provisions of the FAST Act*, MORRISON FOERSTER (Dec. 7, 2015), <http://www.mofo.com/~media/Files/ClientAlert/2015/12/151207FastForwardSecurities.pdf> [<http://perma.cc/U2A6-NDVM>].

its IPO, whichever occurs first.²³ This new grace period will allow EGCs to raise more capital while maintaining their status as an EGC in the event that they exceed \$1 billion in revenue after filing for their IPO.²⁴ Under the old rules, if an EGC lost its EGC status after filing for its IPO, it would have to amend its registration statement to meet the non-EGC requirements, a costly and time-consuming process.²⁵

Section 71003 amends the JOBS Act to allow EGCs to omit certain historical financial information covering periods not required to be included in its preliminary offering filings, “if it ‘reasonably believes [the omitted information] will not be required to be included in the [filing] at the time of the contemplated offering,’” and the EGC also “amends the registration statement prior to distributing a preliminary prospectus to include all financial information required at the time of the amendment.”²⁶ This revision will save EGCs time and money by allowing them to avoid the legal and accounting fees associated with compiling financial statements for periods that may be required under Regulation S-K at the time of the draft registration statement, but will ultimately not be required in the Form S-1 at the time of the IPO.²⁷

Section 72001 is a general provision that applies to all issuers; it allows issuers to incorporate a summary page into their Form 10-K—a required annual SEC filing detailing a public company’s performance—as long as the summary page includes cross-references to where the full information can be found in the Form 10-K.²⁸ Companies were already allowed to use a summary page on their Form

²³ FAST Act § 71002.

²⁴ See Stricherz, *supra* note 3.

²⁵ Daniel P. Adams et al., *FAST Act Brings Additional Benefits for Emerging Growth Companies and New Resale Exemption*, GOODWIN PROCTER (Dec. 14, 2015), http://www.goodwinprocter.com/Publications/Newsletters/Client-Alert/2015/12_14_15-FAST-Act-Brings-Additional-Benefits-for-Emerging-Growth-Companies-and-New-Resale-Exemption.aspx [<http://perma.cc/BG98-TRBP>].

²⁶ SEC FAST Act Press Release, *supra* note 6.

²⁷ See Stacy Kanter, *FAST Act: Capital Formation Changes and Reduced Disclosure Burdens*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG. (Dec. 29, 2015), <http://corpgov.law.harvard.edu/2015/12/29/fast-act-capital-formation-changes-and-reduced-disclosure-burdens/> [<http://perma.cc/6KCA-GG89>].

²⁸ FAST Act § 72001.

10-K, but this new rule will help investors easily navigate from the summary page to the more detailed information in the Form 10-K.²⁹

Section 72002 mandates that the Securities and Exchange Commission (SEC) revise Regulation S-K—an SEC regulation prescribing disclosure requirements in various regulatory filings—in order to reduce the regulatory burden on EGCs and other small issuers, and to streamline Regulation S-K to make the process easier for all issuers.³⁰ Section 72003 seems to aid the mandate of section 72002 by requiring the SEC to conduct a study on how to best overhaul Regulation S-K to “modernize and simplify” its requirements.³¹ The ultimate impact on issuers depends on the nature of these eventual revisions, but the mandate calls for a registration process that is overall less costly and burdensome.³²

Section 76001 amends section 4 of the ‘33 Act to add section 4(a)(7), a new exemption regarding the secondary sale of securities to accredited investors.³³ The exemption provided by section 4(a)(7) essentially codifies the so-called section 4(a)(1.5), an informal exemption developed by practitioners and blessed by the courts which permits certain resales of securities to sophisticated investors not involving any general solicitation.³⁴ Section 4(a)(7)’s codification of the informal section 4(a)(1.5) provides statutory clarity to the resale

²⁹ SEC FAST Act Press Release, *supra* note 6.

³⁰ FAST Act § 72002 (“(1) to further scale or eliminate requirements of regulation S-K, in order to reduce the burden on emerging growth companies, accelerated filers, smaller reporting companies, and other smaller issuers, while still providing all material information to investors;(2) to eliminate provisions of regulation S-K, required for all issuers, that are duplicative, overlapping, outdated, or unnecessary . . .”).

³¹ See FAST Act § 72003.

³² See FAST Act § 72003.

³³ SEC FAST Act Press Release, *supra* note 6 (“The statute adds a new exemption to Section 4 of the Securities Act for secondary sales of securities that are purchased by an accredited investor, among other requirements.”).

³⁴ Arthur R. McGivern et al., *House Passes Act to Codify Section 4(a)(1½) Exemption for Resales of Restricted Securities*, GOODWIN PROCTER (Nov. 4, 2015), http://www.goodwinprocter.com/Publications/Newsletters/Client-Alert/2015/11_04_15-House-Passes-Act-to-Codify-Section-4a1_2-Exemption-for-Resales-of-Restricted-Securities.aspx

[<http://perma.cc/5KKK-SQL4>] (“The purpose of the RAISE Act is to codify the Section 4(a)(1½) exemption – an existing, informal, case law-based exemption for the resale of privately placed securities – in a new subsection (a)(7) to Section 4 of the Securities Act of 1933.”).

exemption; however, it is not as lenient as its informal counterpart.³⁵ Section 4(a)(7) adds the following requirements to the informal section 4(a)(1.5) resale exemption and to other exemptions found under Rule 144: securities must be issued for “at least 90 days” prior to being resold, the exemption applies only to sales to “accredited investors,” informational requirements accompany the transactions, and the securities maintain restrictions on their subsequent resale after the initial resale has taken place.³⁶

Finally, section 84001 mandates that the SEC revise Form S-1, a form by which companies register their securities, to allow smaller reporting companies to incorporate documents filed “after the effective date of the registration statement” by making reference to said documents on the Form S-1.³⁷ Without this revision, smaller reporting companies have to file post-effective registration statements, which are subject to SEC review, in order to update their Form S-1 registration statement as is required under section 10(a)(3) of the ‘33 Act.³⁸ The revision will allow smaller reporting companies to keep their Form S-1 up to date through future incorporation, which will both reduce the cost of manually updating the earlier registration statements and avoid SEC review.³⁹

Overall, the FAST Act’s changes to securities laws serve to “ease requirements for emerging growth companies, fix gaps in existing securities laws, and push the SEC to review outmoded

³⁵ Adams, *supra* note 25 (“While there are benefits to the clarity that Section 4(a)(7) provides as a specifically codified exemption, Section 4(a)(7) is more limited than the Section 4(a)(1½) exemption in many respects and it subjects issuers and selling stockholders to informational requirements that the Section 4(a)(1½) exemption does not require.”).

³⁶ Adams, *supra* note 25 (“Each purchaser must be an accredited investor as defined in Rule 501(a) . . . [t]he securities must be of a class that has been authorized and outstanding for at least 90 days before the date of the transaction. . . the seller and the purchaser must obtain from the issuer, upon request of the seller, and in all cases the seller must make available to a purchaser, certain information, which must be reasonably current in relation to the date of the resale . . . [u]nlike securities resold by non-affiliates under Rule 144, which are freely transferrable by non-affiliates of the issuer, securities resold under Section 4(a)(7) remain restricted securities in the purchaser’s hands, so further resales will require an exemption from the registration provisions of the Securities Act.”).

³⁷ FAST Act § 84001.

³⁸ Kanter, *supra* note 27.

³⁹ See Adams, *supra* note 25.

rules.”⁴⁰ While the majority of the changes ease regulatory burdens and benefit EGCs as well as other issuers,⁴¹ the FAST Act’s codification of section 4(a)(1.5) in section 4(a)(7) is unique in that it is actually a stricter version of the informal rule.⁴²

D. Policy Debate

The FAST Act’s changes to securities laws embrace the general theme of reducing regulatory burdens on issuers and making it easier for smaller companies to reach capital markets through public offerings.⁴³ The FAST Act builds upon the JOBS Act and follows the same strategy of deregulating securities markets to stimulate economic growth.⁴⁴ This strategy raises the issue of determining the proper balance between a well-regulated market that protects investors and a market with fewer regulatory burdens that is conducive to economic growth.⁴⁵

The JOBS Act was designed to reinvigorate the U.S. IPO market by making it easier for smaller companies to reach the capital markets.⁴⁶ The Department of the Treasury conducted a study that found, on average, a company’s employment “increases 86% after [the company goes] public,” demonstrating a clear connection between a

⁴⁰ Nelson, *supra* note 2.

⁴¹ Adams et al., *supra* note 25 (“The FAST Act includes several provisions intended to improve capital formation by smaller issuers and liquidity for their investors. These include a new exemption for resales of securities, as well as several provisions that modify existing provisions of the Jumpstart Our Business Startups Act, or JOBS Act, to further relax the requirements relating to EGC IPOs and registration statements filed by smaller reporting companies.”).

⁴² *Id.* (“While there are benefits to the clarity that Section 4(a)(7) provides as a specifically codified exemption, Section 4(a)(7) is more limited than the Section 4(a)(1½) exemption in many respects and it subjects issuers and selling stockholders to informational requirements that the Section 4(a)(1½) exemption does not require.”).

⁴³ *Highway Bill Rule Changes Smooth Small Companies' Path to Going Public*, WG & L, Jan. 15, 2016, at 1.

⁴⁴ Kanter, *supra* note 27.

⁴⁵ See Jensen, *supra* note 9.

⁴⁶ See Jensen, *supra* note 9 (“Title I of the JOBS Act was intended to reopen the American capital markets to emerging growth companies (EGCs) by allowing firms considering an IPO to make less onerous disclosures.”).

healthy IPO market and job growth.⁴⁷ In 2014, two years after the JOBS Act was enacted, “IPOs [were] up 70%” with some sectors set to hit their highest mark in a decade.⁴⁸ However, the surge in IPOs did not maintain pace in 2015 (perhaps a reason for the FAST Act’s changes), as IPOs were “down 41% from 2014[;] [h]owever, [they were] only 5% below the 10-year median.”⁴⁹

As time has passed since the enactment of the JOBS Act, the investment banking industry’s opinion of the effectiveness of the Act has improved.⁵⁰ Specifically, 51% of investment bankers “believe the [JOBS Act] has had a positive impact on the number of businesses going public, up from 14% two years ago.”⁵¹ Notably, while 48% of those surveyed stated that the JOBS Act increased the risk of “investment scandal,” only 9% stated that the increased risk was “substantial.”⁵² The increased risk of “investment scandal” arises partly from the fact that the JOBS Act allows EGCs to avoid outside audits of their internal controls, which makes it less likely for EGCs to detect and disclose potential issues regarding such controls.⁵³

⁴⁷ Amy Coleman, *A Plague of Locusts: The Jobs Act As Foe More Than Friend*, 16 DUQ. BUS. L. J. 43, 44 (2013).

⁴⁸ Steve Case, *Case: Hey, Washington, the JOBS Act You Passed Is Working*, WALL ST. J. (Apr. 2, 2014), <http://www.wsj.com/articles/SB10001424052702304418404579469312174499556?mg=id-wsj> [<https://perma.cc/8JCN-YB2P>].

⁴⁹ Jackie Kelley, *This Is What We Learned From IPOs In 2015*, FORBES (Jan. 6, 2016), <http://www.forbes.com/sites/ey/2016/01/06/this-is-what-we-learned-from-ipos-in-2015/#1d826cf4687f> [<http://perma.cc/YZH2-HYJV>].

⁵⁰ See Michael Rapoport, *Bankers’ View of JOBS Act Improves, Survey Says*, WALL ST. J. (July 7, 2015, 12:01 PM), <http://blogs.wsj.com/moneybeat/2015/07/07/bankers-view-of-jobs-act-improves-survey-says/> [<https://perma.cc/MAV5-4WXT>].

⁵¹ *Id.* (“Fifty-one percent of the 100 bankers surveyed believe the act has had a positive impact on the number of businesses going public, up from 14% two years ago. Twenty-four percent said the JOBS Act was the most prominent reason for the big increase in U.S. IPOs in 2013 and 2014, BDO said.”).

⁵² *Id.*

⁵³ Michael Rapoport, *Investors’ Prying Eyes Blinded by New Law*, WALL ST. J. (Apr. 5, 2012), <http://www.wsj.com/articles/SB10001424052702304072004577325883892874036> [<https://perma.cc/AW5E-W5BM>] (“Don Whalen, director of research at AuditAnalytics.com, says that even though companies will still have to assess their own internal controls, they could be less likely to detect and disclose problems without auditors looking over their shoulders. ‘You’re not going to be quite as attentive if you’re not worried about someone catching your mistake,’ he said.”).

On the other hand, it is difficult to attribute the increase in IPOs to the JOBS Act when over the same period of time the stock market, and the economy in general, were experiencing gains that could have spurred companies to go public.⁵⁴ Critics also argue that the JOBS Act was most helpful to businesses that generally employ a smaller workforce, such as “early stage biotechnology and drug companies,” implying that the JOBS Act does not actually generate many new jobs.⁵⁵ Finally, some criticize the JOBS Act—and the FAST Act that builds upon it—for achieving only moderate economic growth at the cost of unwinding the disclosure policy that has been built into securities regulations as a result of lessons learned from prior financial catastrophes.⁵⁶

The ultimate effects of the JOBS Act and FAST Act have yet to be seen, but they appear to support a more efficient and less burdensome regulatory landscape at the potential cost of a corresponding increase in market risks.⁵⁷ The trick is finding the proper balance.

E. Conclusion

The FAST Act simplifies the process by which smaller reporting companies and emerging growth companies in particular can navigate the onerous regulations surrounding public offerings.⁵⁸ The FAST Act also mandates the SEC to streamline registration forms to

⁵⁴ Telis Demos & Josh Zumbrun, *How Many Jobs Did 2012 IPO Act Create? Hard to Tell*, WALL ST. J. (Apr. 2, 2015), <http://www.wsj.com/articles/pinning-new-jobs-to-2012-ipo-legislation-proves-a-challenge-1428011862> [http://perma.cc/484E-FZVK].

⁵⁵ Telis Demos, *Does Size Matter for JOBS Act Job Creation?*, WALL ST. J. (Apr. 3, 2015, 2:20 PM), <http://blogs.wsj.com/moneybeat/2015/04/03/does-size-matter-for-jobs-act-job-creation/> [http://perma.cc/QP9Z-Y8NE].

⁵⁶ Coleman, *supra* note 47, at 47 (“First, it defines a specified class of companies, termed emerging growth companies. Then, it protects these companies from the dangerous effects of revisions of the registration statement, as seen with the IPO of Facebook, Inc. in 2012. But, it does so by reversing the federal government’s policy of disclosure, an accumulation of responses to at least 3 large market scandals within the last 90 years and put in place to avoid specific ‘market evils.’”).

⁵⁷ See *e.g.*, Coleman *supra* note 47 and accompanying text.

⁵⁸ Stricherz, *supra* note 3 (stating that EGCs have “more financial leeway” in the IPO process).

bring them up to date and remove duplicative requirements.⁵⁹ The goal is to make the process of raising capital more straightforward and less costly to accomplish.⁶⁰ The FAST Act builds upon the JOBS Act's strategy of deregulating securities law in favor of promoting economic growth.⁶¹ There is tentative evidence that the strategy is working, but also a general sentiment that the easing of regulations has made markets riskier for investors.⁶² One thing is certain: the FAST Act has made it less difficult for emerging growth companies to raise capital. The effect this will have on the overall economy and the risks that it creates remain uncertain.

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⁵⁹ See Press Release, *supra* note 6 and accompanying text.

⁶⁰ See FAST Act, Pub. L. No. 114-94, § 72003, 129 Stat. 1312 (describing the goal of reducing “costs and burdens on issuers”).

⁶¹ Roe, *supra* note 4, at 1 (“[T]he JOBS Act eases disclosure and other regulatory requirements for smaller companies . . .”).

⁶² See Coleman, *supra* note 47 and accompanying text.

⁶³ Student, Boston University School of Law (J.D. 2017).